

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Darren C. Sander,

Plaintiff,

v.

Case No. 1:11cv673

Commissioner of Social Security

Judge Michael R. Barrett

Defendant.

ORDER

This matter is before the Court upon the Magistrate Judge's August 10, 2015 Report and Recommendation ("R&R") on Plaintiff's Motion for Attorney Fees. (Doc. 27).

Notice was given to the parties under 28 U.S.C. § 636(b)(1)(c). Plaintiff filed objections to the Magistrate Judge's R&R. (Doc. 28).

In her R&R, the Magistrate Judge recommends that counsel for Plaintiff be awarded \$12,366 in attorney fees under 42 U.S.C. § 406(b). The Magistrate Judge explained that in Plaintiff's Motion for Attorney Fees, counsel for Plaintiff requested \$18,000 under a contingency free contract. However, the Magistrate Judge recommends a reduction in this request based on the factors outlined in *Lasley v. Comm'r of Soc. Sec.*, 771 F.3d 308 (6th Cir. 2014).

Plaintiff objects to the reduction in fees and explains that the circumstances in this case can be distinguished from the *Lasley* case. Plaintiff points out that in *Lasley*, counsel delayed in filing his Section 406(b) motion, but in this case, Plaintiff filed his Motion for Attorney Fees approximately thirty days after the mailing of the Notice of

Award. Next, Plaintiff points out that in *Lasley*, there was no offer to negotiate or reduce the fee, but in this case, counsel is seeking less than the full 25% provided for in the contingency agreement.

Plaintiff also explains that counsel's standard hourly rate is \$250 per hour, which is in line with a 2013 survey which showed that attorneys in downtown Cincinnati charge a mean rate of \$297 per hour. Plaintiff explains that the requested amount of \$18,000 would equate to a hypothetical rate of \$524.02 per hour. Plaintiff explains that this hourly rate is less than the presumptively reasonable rate of twice the standard rate. See *Hayes v. Sec'y of Health & Human Servs.*, 923 F.2d 418, 422 (6th Cir. 1991) ("a hypothetical hourly rate that is less than twice the standard rate is per se reasonable, and a hypothetical hourly rate that is equal to or greater than twice the standard rate may well be reasonable.").

Finally, counsel for Plaintiff points to the affidavit of Plaintiff which states that he would have no objection to the full 25% amount being paid to counsel. (Doc. 23, Ex. G, ¶ 19).

The Court finds that Plaintiff's objections are well-taken. The Court also notes that a hypothetical rate of \$524.02 per hour is similar to hypothetical rates which have been approved in other § 406(b) fee petitions in this district. See *Tibbetts v. Comm'r of Soc. Sec.*, No. 1:12-CV-894, 2015 WL 1637414, at *5 (S.D. Ohio Apr. 13, 2015) (awarding hourly rate of \$600); *Kitchen v. Comm'r of Soc. Sec.*, No. 3:09-cv-193, 2013 WL 1149609, at *1 (S.D. Ohio Mar. 19, 2013) (awarding hourly rate of \$548.60); *Pencil v. Astrue*, No. 3:10-cv-394, 2012 WL 4364273, at *2 (S.D. Ohio Sept. 24, 2012).

Accordingly, the Magistrate Judge's August 10, 2015 Report and

Recommendation (“R&R”) on Plaintiff’s Motion for Attorney Fees (Doc. 27) is **ADOPTED in PART**. Plaintiff’s Motion for Attorney Fees is **GRANTED**. Counsel for Plaintiff is awarded a total of \$18,000 out of Plaintiff’s past-due benefits.

IT IS SO ORDERED.

/s/ Michael R. Barrett
Michael R. Barrett, Judge
United States District Court